S.B.CIVIL WRIT PETITION NO.5721/2006

Munir Ali
v.
Smt.Suraj Devi & Anr.

Date of Order :: 12th September, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. V.K.Aggarwal, for the petitioner.
Mr. N.S.Acharya, for the respondents.

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The validity, propriety and correctness of the order dated 26.8.2006 passed by the Presiding Officer, Rent Tribunal, Bikaner is questioned by the petitioner with the contention that the Tribunal erred while not appreciating the contention of the petitioner that the application brought by the petitioner for eviction of the premises under Rajasthan Rent Control Act, 2001 (hereinafter referred to as “the Act of 2001”) is barred by the principles of res-subjudice.

By the order impugned, learned Tribunal dismissed the application dated 7.5.2005 preferred by the petitioner while defending an application for eviction from the rented premises. The case of the petitioner before the Tribunal was that earlier respondent Smt. Suraj Devi preferred a suit under the provisions of the Rajasthan Rent Control Act, 1950 for determination of rent and that was decreed under the judgment dated 10.10.2004. Being aggrieved by the judgment and decree dated 20.10.2004 the petitioner

preferred a regular first appeal before this Court and while admitting that for hearing an interim order was passed staying operation of the judgment and decree dated 20.10.2004 provided the appellant (present petitioner) continuous to pay monthly rent @ Rs.3000/- per month w.e.f. 1.5.2005. Respondent Smt. Suraj Devi during pendency of the appeal aforesaid preferred an application under the Act of 2001 for eviction of the petitioner from the rented premises on the ground of default in payment of rent as per judgment and decree dated 20.10.2004. The petitioner by application dated 17.5.2005 prayed for not to proceed with the application under the Act of 2001 as question with regard to determination of rent is subject matter of an appeal pending before this Court. Learned Presiding Officer, Rent Tribunal, Bikaner by order impugned rejected the application holding therein that first appeal pending before the High Court relates to the suit relating to determination of rent, whereas the application preferred under the Act of 2001 is for eviction from the rented premises, as such the provisions of Section 10 CPC are having are having no application.

The contention of counsel for the petitioner is that though the application preferred before the Rent Tribunal, Bikaner under the Act of 2001 is for eviction from the rented premises but it is based only on the ground of default in making payment of rent as

per judgment and decree dated 20.10.2004 and the operation and effect of the judgment dated 20.10.2004 already being stayed, any order passed in the application by the Rent Tribunal shall as a matter of fact frustrate the appeal. It is also emphasised that till determination of rent by this Court in the first appeal no finding can be given by the Rent Tribunal with regard to default in payment of rent. To substantiate the plea, the petitioner has also placed reliance upon the judgment of Hon'ble Supreme Court in the case of P.V. Shetty v. B.S. Giridhar, reported in (1982)3 403.

On the other hand, it is contended by counsel for respondent Smt. Suraj Devi that as a matter of fact the interim order passed by this Court in SBCivil First Appeal No.160/2005 on 26.4.2005 is no more in operation as the petitioner has not paid monthly rent @ Rs.300/- per month continuously. Beside that, while supporting the order impugned the contention of counsel for the respondent is that the subject matter of the application preferred under the Act of 2001 is relating to eviction from the rented premises, whereas the earlier suit, that was decided and decreed on 20.10.2004, was relating to determination of rent, as such the Rent Tribunal held that the provisions of Section 10 CPC are having no application.

Having considered the rival contentions, I do not find any substance in this petition for writ. At threshold I found that the law laid down by Hon'ble Supreme Court in the case of P.V.Shetty (supra) is having no application in present controversy. In the case of P.V.Shetty (supra) the suit for eviction from premises could have not been proceeded as the result of the application for determination of rent could have effected the application of Karnataka Rent Control Act itself and, therefore, it was found just and fair to defer hearing of the suit till the fixation of fair rent. In the present case no such eventuality is available. The disposal of the dispute regarding determination of rent shall not be having effect on the merits of the application preferred to seek ejectment from the rented premises. The Rent Tribunal is adjudicating an application for eviction from the rented premises and the ground seeking eviction is default in payment of rent. The first appeal that is pending before this Court giving challenge to the judgment and decree dated 20.10.2004 is relating to determination of rent. The matter in issue in both the proceedings is not directly and substantially same and, therefore, the Rent Tribunal rightly rejected the application specially in the circumstances that counsel for the petitioner has not denied the fact stated at Bar by counsel for the respondent that even the rent of Rs.3000/- per month as ordered by this Court on 26.4.2005 has not been

denied. The case of P.V.Shetty (supra) is substantially different on facts as in that matter the proceedings were arising out of a same case and the same issue and that is not the position in present case.

I do not find any reason to interfere with the order passed by the court below, thus, the writ petition is dismissed.

(GOVIND MATHUR),J.

Kkm/ps.